IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.151 OF 2005

IN

SUIT NO.98 OF 1997

IN

(PETITION NO.497 OF 1997)

Shri Jawahar Asnani .. Petitioner

versus

M/s.Karnataka Bank Ltd. & Anr. ..Respondents/ Defendants.

Mr. K. Bhalchandani i/b. Kamal & Co. for the Petitioner.

Mr.N.G.Thakkar, Sr. Counsel i/b. M.T.Raheja for the Defendant No.2

Coram : S.R.Sathe, J.

Dated : 16th Nov., 2005

P.C.

1. Heard learned Counsel for the parties. The learned Counsel for the Petitioner fairly submitted

that as the Respondent No.2 who is the daughterin law of the Petitioner is desirous of surrendering the present flat and purchasing new flat as mentioned in the notice of motion for her comforts, the Plaintiff has no objection for the same and as such to grant relief in terms of prayer clause A & B of the Notice of Motion No.151 of 2005 (in Petition No.497 of 97) in Suit No.98 of 1997. However, he submitted that the interest of the minor daughter of Respondent No.2 has to be protected. Besides this, he also submitted that as the daughter Sumita has now become major and was not a party to the earlier agreement in connection with flat No.10, Jai Shanker Deep (present flat), it is necessary that for the new agreement with respect to the flat No.602, White Orchit, i.e. the proposed flat, she should be party and give undertaking that she will not alienate, transfer or dispose of the same without prior permission of this Court.

2. He also pointed out that the Respondent No.2 is likely to receive some amount from the Developer in pursuance of the M.O.U. dated 30.3.2005 and some order is necessary in that behalf. However, the learned Advocate for the Respondent No.2 made a statement that the Respondent No.2 will not be

getting any amount under MOU dated 30.3.205.

3. In view of above, the Respondent No.2 is permitted to enter into necessary agreement with regard to surrender of present flat No.10 to Developer and secure new flat No.602 at White Orchid as mentioned in prayer Clause A of the Notice of Motion. However, the said agreement is to be executed by Respondent No.2 for herself and as a guardian of minor daughter. The major daughter Sumita should also be made a party and beneficiary to the above mentioned agreement.

4. On getting possession of flat No.602 on the 6th floor of building White Orchid, constructed on Plot No.10, TPS III, Bandra (West), Mumbai 400 050 on Ownership basis and necessary documents in that behalf, the Respondent No.2 and her major daughter Sumita to surrender to M/s. Jay Shankar Deep & Company (the Developer) or his nominee the flat No.10, on 2nd floor of the Building Jay Shanker Deep, 602/B, 16th Road, TPS III, Pali Hill, Bandra (West), Mumbai 50, without paying any monetary compensation.

5. The Respondent No.2 (for herself and her

minor daughter) and the major daughter Sumita, to file undertaking in the form of affidavit that they will not alienate, transfer or create encumberance in any form on the new flat (flat No.602 of Orchid Building) without prior permission of the Court.

6. The Respondent No.2 to produce in this Court the true copies of the documents that will be executed between Respondent No.2 and her major daughter on one side and the Developer on the other side within four days from the completion of the transaction.

6. Notice of Motion, made absolute in above terms and disposed of accordingly.

7. Parties to act on the authenticated copy of this order.

(S.R.Sathe, J.)